COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

POLICY AND PROCEDURES IN THE PROVISION OF OPERATOR-ASSISTED TELECOMMUNICATIONS SERVICES	)))	ADMINISTRATIVE CASE NO. 330

O R D E R

BACKGROUND

This proceeding was initiated by Order of September 8, 1989, for the purpose of establishing the policy and procedures for the provision of operator-assisted telecommunications services by non-local exchange carriers. The Order set forth the restrictions and conditions under which operator-assisted services could be provided. Those restrictions and conditions were based on the Commission's finding in Case No. 10002[1] that, because of the lack of a formal prearranged relationship between operator services providers and the actual users of the services, the restrictions and conditions were necessary in order for the service to be in the public interest. The Commission further indicated its intent to apply those requirements universally to all non-local exchange carrier providers of operator-assisted services. The Order establishing this proceeding required all non-local exchange

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1 Case No. 10002, The Application of International Telecharge for a Certificate of Public Convenience and Necessity to Operate as a Reseller of Telecommunications Services Within the State of Kentucky.

carriers to comply or provide evidence why their operator-assisted services should be exempted from the restrictions and conditions.

Comments to this Order were filed by AT&T Communications of the South Central States, Inc. ("AT&T"), AmeriCall Systems of Louisville ("AmeriCall"), and ITT Communications and Information Services, Inc. ("ITT"). After reviewing these comments, the Commission issued an Order on January 15, 1990 modifying the restrictions and conditions of service previously imposed.

A hearing was held on October 18, 1990 in which AmeriCall, South Central Bell Telephone Company ("SCB"), MCI Telecommunications Corporation ("MCI"), the Attorney General by and through his Utility and Rate Intervention Division ("AG"), and AT&T participated. However, only SCB and AmeriCall presented testimony. Briefs were subsequently filed by AmeriCall, SCB, AT&T, and the AG.

In its September 8, 1989 Order, the Commission determined that operator-assisted services would be subject to rate regulation and that rates could not exceed AT&T's maximum approved rates. Except as specified in the Orders in this case, non-dominant carriers would be subject to regulation as delineated in the May 25, 1984 Order in Administrative Case No. 273,[2] as well as any subsequent modifications to the non-dominant carrier rules.

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[2] Administrative Case No. 273, An Inquiry into Inter- and IntraLATA Intrastate Competition in Toll and Related Services Markets in Kentucky.

DISCUSSION

Both AmeriCall and AT&T stated in their briefs that operator services rates should be based on the costs of the individual company,[3] and not restricted to AT&T rates as an automatic maximum.

In the years since the diverstitute of AT&T, the telephone industry has changed significantly. Open entry for competitors in the telephone marketplace and rapid advancement in telecommunications technology have stimulated not only the introduction of many new services and service providers, but growth in competition among providers for both new services and existing services. Numerous providers of operator-assisted services are now competing for contracts to provide these services (which include collect or person-to-person calls, calls billed to a third number, and calls billed to a credit card or telephone calling card) to hotels, hospitals, airports, universities, pay phones, and other entities where the telephone traffic of consumers is aggregated. However, the existence of a variety of operator services providers does not in itself ensure a truly competitive market.

AmeriCall further expressed its belief that the same level of regulation determined appropriate for non-dominant carriers in Administrative Case No. 273 is sufficient for operator services

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3 Brief of AT&T, page 4, filed November 27, 1990, and Brief of AmeriCall, pages 2-7, filed November 28, 1990.

providers. In so contending, AmeriCall has not given sufficient weight to the Commission's findings in its May 25, 1984 Order in Administrative Case No. 273, that (at page 21):

> Any determination to apply differential regulatory treatment to companies within an industry must be grounded in a determination that the public welfare is increased by such action.

The application of limited regulatory oversight of non-dominant carriers established in Administrative Case No. 273 was based upon the circumstances which existed in the telecommunications industry shortly after the divestiture of AT&T in 1984. As a result, non-dominant carrier rules were formulated with the knowledge that because of the nature of the services being offered and the lack of market power exerted by other interexchange carriers ("IXCs") and WATS resellers, these carriers were in a position to only assess fair, just and reasonable rates as required by KRS 278.030. In Administrative Case No. 273, the Commission did not contemplate operator services where there may be no formal, prearranged relationship between the carrier and the end-user.

Since AT&T is the dominant IXC in Kentucky, the Commission finds that limitation of operator services rates to the maximum rates approved for AT&T is reasonable and continuation of this limitation is necessary to protect the public interest.

In addition, AmeriCall requested that the Commission consider changing several of the current conditions for operator service providers including: elimination of the requirement that carriers post information at traffic aggregator locations, elimination of

the requirement that carriers refuse to accept calling cards that cannot be validated, elimination of the requirement that 10XXX access be unblocked, that all "0-" interLATA traffic be transferred to the IXC presubscribed for "1+" interLATA traffic, and changing the definition of "traffic aggregator."

In its response to the Commission's September 8, 1989 Order, AT&T proposed a definition of "traffic aggregator" which excluded telecommunications carriers. The Commission declined to make exclusions at that time, finding that the characteristics of the service itself provided sufficient definition. However, based on further evidence in this case, the Commission finds that traffic aggregator should be defined and will adopt a definition based on the Telephone Operator Consumer Services Improvement Act of 1990 ("Operator Services Act") enacted on October 17, 1990. The Operator Services Act sets minimum standards for the provision of operator services. It requires the Federal Communications Commission ("FCC") to prescribe rules to be effective within nine months of enactment of the bill to protect consumers from unfair practices of the providers of operator services.

The Commission defines "Traffic aggregator" to mean:

> any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises for intrastate telephone calls using a provider of operator services. Aggregators include hotels and motels, hospitals, universities, airports, gas stations, and non-local exchange carrier pay telephone owners. This definition includes the provision of all non-local exchange carrier pay telephones even if no compensation is paid to the owner of the pay telephone. The residential use of operator services is specifically excluded from this definition.

AmeriCall asserted that since the federal legislation requires the posting of certain information, it is unnecessary for this Commission to require any additional posting. The informational posting requirements of this Commission differ in that the federal legislation requires the traffic aggregator to post the necessary information while the Commission places the burden on the regulated operator services provider to furnish tent cards and stickers to the aggregator and to include provisions in contracts and tariffs that subject violators to termination of service. It is not the Commission's intent to require duplicate posting. However, the Commission finds that this requirement should remain in order to provide a vehicle for intrastate enforcement should a traffic aggregator fail to comply with the federal legislation.

AmeriCall stated that it is in favor of the concept of calling card validation, but that validation of all calling cards should not be mandatory.[4] In support of this proposition, AmeriCall stated that there are numerous valid calling cards that are not contained in the databases available to AmeriCall. AmeriCall suggested that the decision of whether to accept a calling card should be left to the carrier which ultimately bears the risk of fraud.[5]

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4 Transcript of Evidence ("T.E."), page 20, October 18, 1989.

5 Prefiled Testimony of Robert E. Bowling, filed October 1, 1989, pages 9-10.

SCB argued that it believes the Commission's requirement to only bill to cards that can be validated is appropriate and that, while it understands that credit card validation may not be available from all local exchange carriers ("LECs") it provides validation service to AmeriCall equivalent to that provided to AT&T. The validation requirement was not questioned by other carriers. AmeriCall did not provide any evidence to quantify the extent or impact of its validation limitations and the risk of fraud.

While some problems may exist in the validation process, we are not convinced they outweigh the public interests that will be protected by continuation of the validation requirement.

AmeriCall claimed that it has had problems with LEC operators who pass all "0-" interLATA calls to AT&T rather than to the IXC to which the originating line is presubscribed.[6] However, AmeriCall also recognized that the LECs do not currently have the technological capability to transfer such calls to IXCs other than AT&T. AmeriCall requested that all LECs be required to instruct their operator to tell callers to hang up and redial on a "0+" basis where the caller dials "0-" and then requests to place an interLATA call. AmeriCall claimed that SCB and Cincinnati Bell already follow this policy.[7] SCB verified that it is presently

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6 Id., page 13.

7 Brief of AmeriCall, page 12-13.

turning back such calls with appropriate instructions.[8] The Commission believes this is a reasonable request which should be granted.

AmeriCall expressed concern that the Commission's requirement that 10XXX access not be blocked offered a significant potential for fraud.[9] However, AmeriCall presented no evidence showing either that it was experiencing fraud or quantifying the extent to which fraud exists in the intrastate operator services market. Fraud potential in connection with 10XXX access and adequate solutions to the problems of fraud are issues required to be considered by the FCC pursuant to the Operator Services Act. Absent quantitative evidence to the contrary, the Commission is not persuaded that its 10XXX unblocking requirement should be changed at this time.

AmeriCall also raised issues concerning LEC billing and collection practices and application of the operator services requirements to the operator services and aggregator locations of LECs. The Commission's Orders in this proceeding specifically relate to non-local exchange carriers. Billing and collection services issues are the subject of Administrative Case No. 306,[10] which is pending Commission decision. Therefore, neither of these issues are appropriate for consideration in this case.

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8 SCB's Brief, pages 3-4.

9 T.E., page 11, dated October 18, 1990.

10 Administrative Case No. 306, Detariffing Billing and Collection Services.

FINDINGS AND ORDERS

Except for the handling of "0-" calls, the Commission finds that the restrictions and conditions for the provision of intrastate operator services set forth in its Order of September 8, 1989 as amended by its Order of January 15, 1990 are reasonable and should remain in full force and effect and this proceeding should be concluded. The Commission will monitor the actions of the FCC in its rulemaking procedure with regard to interstate operator services and may consider modification of its intrastate operator services policy if such is deemed appropriate.

Having reviewed the evidence of record, and having been otherwise sufficiently advised, the Commission HEREBY ORDERS that:

1. "Traffic aggregator" shall be defined as any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises for intrastate telephone calls using a provider of operator services. Aggregators shall include hotels and motels, hospitals, universities, airports, gas stations, and non-local exchange carrier pay telephone owners. This definition includes the provision of all non-local exchange carrier pay telephones even if no compensation is paid to the owner of the pay telephone. The residential use of operator services shall be specifically excluded from this definition.

2. In situations where the caller dials "0-" and then requests to place an interLATA call, LECs' operators shall turn

back the call with the appropriate instructions to redial on a "0+" basis.

3. All other restrictions and conditions set forth in the Commission's September 8, 1989 Order as amended by the January 15, 1990 Order for the provision of intrastate operator-assisted telecommunications services shall remain in full force and effect as follows:

(a) Operator-assisted services shall be subject to rate regulation and rates shall not exceed AT&T's maximum approved rates. "Maximum approved rates" is defined to mean the rates approved by this Commission in AT&T's most recent rate proceeding for measured toll service applicable to operator-assisted calls, as well as the additional charges for operator assistance. Carriers are not permitted to include any other surcharges or to bill for uncompleted calls. Time-of-day discounts shall also be applicable. Carriers are also required to rate calls using the same basis that AT&T uses to rate calls, i.e., distance calculations based on points-of-call origination and termination, definitions of chargeable times, billing unit increments, rounding of fractional units, and minimum usages. In Case No. 9889,[11] the Commission allowed AT&T to reduce certain rates up to a maximum of 10 percent without filing the full cost support normally required in a rate proceeding. Carriers are not required to match AT&T's rate reductions resulting from this rate flexibility. However,

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[11] Case No. 9889, Adjustment of Rates of AT&T Communications of the South Central States, Inc.

when there is any change in AT&T's maximum approved rates, carriers shall file tariffs if necessary to comply with the requirements herein within 30 days of the effective date of AT&T's rate change.

(b) Except as otherwise indicated in this Order, non-dominant carriers shall be subject to regulation as delineated in the May 25, 1984 Order in Administrative Case No. 273 as well as any subsequent modifications to non-dominant carrier regulations. In the event of conflict, the terms of the instant Order shall take precedence, unless a carrier is specifically relieved from compliance with any conditions contained herein. AT&T shall remain subject to regulatory oversight as a dominant carrier.

(c) Operator service providers who provide service to traffic aggregators shall not allow access to the operator services of competing carriers to be blocked or intercepted. Blocking and interception prohibitions shall be included in tariffs and all contracts entered into with any traffic aggregator and shall state that violators will be subject to immediate termination of service after 20 days' notice to the owners of non-complying customer premises equipment.

(d) Access to the local exchange carrier's operators shall not be blocked or otherwise intercepted by traffic aggregators. Specifically, all "0-" calls, that is, when an end-user dials zero without any following digits, shall be directed to the local

exchange carrier operators. In equal access areas, "0+"[12] intraLATA calls shall not be intercepted or blocked. In non-equal access areas, it is prohibited to block or intercept "0-" calls; however, it is permissible to intercept "0+" calls. Blocking and interception prohibitions shall be included in tariffs and all contracts entered into with any traffic aggregator and shall state that violators will be subject to immediate termination of service after 20 days' notice to the owners of non-complying customer premises equipment.

(e) Carriers shall not be required to provide access codes of competitors. Each carrier should advise its own customers as to the appropriate 10XXX access code.

(f) Carriers shall provide tent cards and stickers to traffic aggregators to be placed near or on telephone equipment used to access their services and shall include provisions in tariffs and contracts entered into with any traffic aggregator that subject violators to immediate termination of service after 20 days' notice to the owners of non-complying customer premises equipment.

(g) Operators shall identify the carrier at least once during every call before any charges are incurred.

(h) Operators shall provide an indication of the carrier's rates to any caller upon request.

(i) Carriers shall not accept calling cards for billing purposes if they are unable to validate the card.

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12 A "0+" calls occurs when an end-user dials zero and then dials the digits of the called telephone number.

4. All non-local exchange companies which do not have operator services tariffs on file with the Commission in compliance with the Commission's Orders shall file complying tariffs within 30 days of the date of this Order.

5. Administrative Case No. 330 is hereby closed.

Done at Frankfort, Kentucky, this 27th day of March, 1991.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ATTEST:

Executive Director